



Docket No.: SON-2815
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Yuichi Takagi et al.

Application No.: 10/525,203

Confirmation No.: 7661

Filed: February 22, 2005

Art Unit: 2629

For: CURRENT OUTPUT TYPE DRIVE CIRCUIT
AND DISPLAY DEVICE

Examiner: D. P. Joseph

**REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)**

Mail Stop Patent Ext.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir,

Presently, the Patent Term Adjustment for the above application is incorrectly reported as **654 days**. (See Determination of Patent Term Adjustment under 35 U.S.C. § 154(b), attached.) This adjustment was calculated by summing the number of days of delay by the U.S. Patent and Trademark Office ("Office") to respond under 35 U.S.C. §§ 132 or 151 after the 14 month period after the filing of the present application. (See Patent Term Adjustment History from USPTO PAIR, attached.) However, in view of *Wyeth v. Dudas*, 580 F. Supp. 2d 138, 88 USPQ2d 1538 (D.D.C. 2008), this Determination of Patent Term Adjustment is incorrect.

Because the Office failed to issue a patent for the above application within three years, pursuant to 35 U.S.C. § 154(b)(1)(B) in addition to the Office's delay to respond after the 14 month period after filing, Applicant respectfully requests reconsideration of the Patent Term Adjustment and reinstatement of least an additional **594 days** to the Patent Term Adjustment, extending the

Patent Term Adjustment for the above application from 654 days to at least 1248 days. See 35 U.S.C. § 154 (b)(3)(B)(ii) and 37 C.F.R. § 1.705(b).

STATEMENT OF THE FACTS

The above application was filed or fulfilled the requirements of 35 U.S.C. § 371 on February 22, 2005. On February 5, 2008, 654 days after the allotted 14-month period, the Office mailed an initial Non-Final Office Action to the Applicants. Applicants responded to the Non-Final Office Action by filing a timely Amendment on April 23, 2008.

On July 25, 2008, the Office mailed a Final Office Action. On October 22, 2008, Applicant's responded to said Final Office Action by filing a timely Notice of Appeal with an accompanying Request for Pre-Appeal Brief Panel Review. After the subsequent Pre-Appeal Brief Panel Review, the present application remained under appeal. Applicants filed a timely Appeal Brief on February 23, 2009.

After the filing of the Appeal Brief, but before the present application proceeded to the Board of Patent Appeals and Interferences, the Examiner reopened prosecution, mailing a Non-Final Office Action on April 9, 2009. Applicants responded to said Non-Final Office Action by filing a timely Response on May 21, 2009. The Office mailed a Final Office Action on July 7, 2009. Applicants responded to said Final Office Action by filing a timely Amendment on August 5, 2009. On September 3, 2009, the Office mailed a Notice of Allowance allowing the pending claims of the present Application.

At no point did the Applicants fail to engage in reasonable efforts to conclude prosecution of the present application.

However, in two instances the present application was subject to examination delays by the Office. First, the Office failed to provide at least one of the notifications under 35 U.S.C. § 132 or a Notice of Allowance under 35 U.S.C. § 151 for 654 days after the allowed 14-month period. Second, the Office has failed to issue a patent for the present application for at least 594 days allotted three year guarantee.

The present application is *NOT* subject to a terminal disclaimer.

RECALCULATION OF THE PATENT TERM ADJUSTMENT

Pursuant to 35 U.S.C. § 154(b)(4), Applicant requests that the Patent Term Adjustment for the above application be increased from 654 days to at least 1248 days. Because the Office delayed in initially responding to this application by 654 days beyond the 14-month allotted time, the patent term should be increased by 654 days. Additionally, because the Office failed to issue a patent within three years of the actual filing of the patent application, the Patent Term Adjustment should be increased by the number of days from the three-year date of February 22, 2008, to the date of issue (at least 594 days).

The Patent Term should be *increased by 654 days* for the period beginning April 22, 2006, and ending on February 5, 2008.

Pursuant to 35 U.S.C. § 154(b)(1)(A), 37 C.F.R. § 1.702(a) states that “the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to . . . [m]ail at least one of a notification under 35 U.S.C. § 132 or a notice of allowance under 35 U.S.C. § 151 not later than fourteen months after the date on which the application was filed.”

37 C.F.R. § 1.703(a)(1) states that the period of adjustment will be increased by the number of days, “in the period beginning on the day after the date that is fourteen months after the date on which the application was filed . . . and ending on the date of mailing of either an action under 35 U.S.C. § 132, or a notice of allowance under 35 U.S.C. § 151, which ever occurs first.”

The Application was filed or fulfilled the requirements of 35 U.S.C. § 371 on **February 22, 2005**. The date that is fourteen months after this date is **April 22, 2006**. The first action under 35 U.S.C. § 132 in the prosecution of this patent was not mailed by the Office until **February 5, 2008**. The number of days in the period beginning on **April 22, 2006** and ending on **February 5, 2008** is **654 days**.

Accordingly, the patent term should be increased by 654 days under 35 U.S.C. § 154(b)(1)(A). This 654 day addition is correctly recorded by the USPTO PAIR / PALM system.

The patent term should be **increased by at least 594 days** for the period beginning February 22, 2008, and ending on the date the patent issues.

Pursuant to 35 U.S.C. § 154(b)(1)(B), 37 C.F.R. § 1.702(b) states that “the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed,” not including (1) any time consumed by continued examination of the application, (2) any time consumed by an interference proceeding, (3) any time consumed by the imposition of a secrecy order, (4) any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court, or (5) any delay in the processing of the application by the Office that was requested by the applicant.

The prosecution of this Application was *NOT* delayed by (1) any time consumed by continued examination of the application, (2) any time consumed by an interference proceeding, (3) any time consumed by the imposition of a secrecy order, (4) any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court, or (5) any delay in the processing of the application by the Office that was requested by the applicant.

Applicant notes that although a Notice of Appeal were filed on October 22, 2008, the Application was not reviewed by the Board of Patent Appeals and Interferences or a Federal court. With both Appeals, prosecution was re-opened before the case appeal was received by the Board of Patent Appeals and Interferences. Accordingly, no time was consumed by review by the Board of Patent Appeals and Interferences.

This Application fulfilled the requirements of 35 U.S.C. § 371 on **February 22, 2005**. The three year date after February 22, 2005 was **February 22, 2008**. The number of days from February 22, 2008 to the present date (October 8, 2009) is 594 days. When this Application issues, the patent term should be increased by the number of days between February 22, 2008 and the date of issue. Accordingly, the patent term should be **increased by at least 594 days**.

The patent term should be **increased by both 654 days** for the Office's delay in initially responding to the Application after the 14-month period **and should also be increased by at least another 594 days** for the Office's delay in issuing a patent within 3 years of filing the Application.

Based on 35 U.S.C. § 154(b)(2)(A), the Office has previously determined that any administrative delay under 35 U.S.C. § 154(b)(1)(A) overlaps any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B) and that a patent applicant gets credit for 'A delay' or for 'B delay,' whichever is larger, but never A delay + B delay.

However, in view of *Wyeth v. Dudas*, 580 F. Supp. 2d 138, 88 USPQ2d 1538 (D.D.C. 2008), this determination has been held to be incorrect. The *Wyeth* court held that an applicant was entitled to periods of delay by the Office under both 35 U.S.C. § 154(b)(1)(A) and 35 U.S.C. § 154(b)(1)(B).

Accordingly, Applicant is entitled to the patent term being **increased by both 654 days** for the Office's delay in initially responding to the Application after the 14-month period **and should also be increased by at least another 594 days** for the Office's delay in issuing a patent within 3 years of filing the Application.

Calculating the Adjustment in the manner set forth by the *Wyeth* court would extend the Patent Term Adjustment of this Application from 654 days by at least another 594 days to a total of at least 1248 days.

CONCLUSION

Pursuant to 35 U.S.C. § 154(b)(4), Applicant requests that the Patent Term Adjustment for the above application be increased from 654 days to at least 1248 days. Because the Office delayed in initially responding to this application by 654 days beyond the 14-month allotted time, the patent term should be increased by 654 days. Additionally, because the Office failed to issue a patent within three years of the actual filing of the patent application, the Patent Term Adjustment should be increased by the number of days from the three-year date of February 22, 2008, to the date of issue (at least 1248 days).

REQUIRED FEE

The Commissioner is hereby authorized to charge a fee of **\$200.00** from Deposit Account # 18-0013 in accordance with 37 C.F.R. § 1.18(e). If any additional fee is required or any overpayment made, the Commissioner is authorized to charge the fee or credit the overpayment to the same account.

Dated: October 8, 2009

Respectfully submitted,

By 

Christopher M. Tobin

Registration No.: 40,290

RADER, FISHMAN & GRAUER PLLC

Correspondence Customer Number: 23353

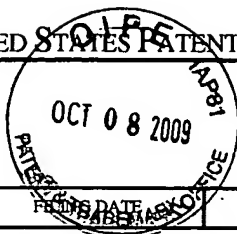
Attorney for Applicant

Attached: Determination of Patent Term Adjustment under 35 U.S.C. § 154(b)
Patent Term Adjustment History from PTO PAIR



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov



APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,203	02/22/2005	Yuichi Takagi	SON-2815	7661

23353 7590 09/03/2009

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1233 20TH STREET N.W., SUITE 501
WASHINGTON, DC 20036

EXAMINER

JOSEPH, DENNIS P

ART UNIT	PAPER NUMBER
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2629

DATE MAILED: 09/03/2009

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 654 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 654 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

10/525,203 CURRENT OUTPUT DRIVE CIRCUIT AND DISPLAY DEVICE 10-08-2009::10:14:46

Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/525,203

Filing or 371(c) Date:	02-22-2005	USPTO Delay (PTO) Delay (days):	654
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	0
Post-Issue Petitions (days):	+0	Total PTA (days):	654
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
09-03-2009	Mail Notice of Allowance		
09-01-2009	Document Verification		
09-01-2009	Notice of Allowance Data Verification Completed		
08-11-2009	Date Forwarded to Examiner		
08-05-2009	Amendment after Final Rejection		
07-07-2009	Mail Final Rejection (PTOL - 326)		
07-06-2009	Final Rejection		
06-15-2009	Date Forwarded to Examiner		
05-21-2009	Response after Non-Final Action		
04-09-2009	Mail Non-Final Rejection		
04-08-2009	Non-Final Rejection		
03-14-2009	Appeal Brief Review Complete		
03-14-2009	Date Forwarded to Examiner		
02-23-2009	Appeal Brief Filed		
01-21-2009	Mail Appeals conf. Proceed to BPAI		
01-21-2009	Mail Appeals conf. Proceed to BPAI		
01-19-2009	Pre-Appeals Conference Decision - Proceed to BPAI		
01-19-2009	Pre-Appeals Conference Decision - Proceed to BPAI		
10-22-2008	Request for Pre-Appeal Conference Filed		
10-22-2008	Notice of Appeal Filed		
10-02-2008	Mail Advisory Action (PTOL - 303)		
09-29-2008	Advisory Action (PTOL-303)		
09-26-2008	Date Forwarded to Examiner		
09-22-2008	Amendment after Final Rejection		
07-25-2008	Mail Final Rejection (PTOL - 326)		
07-21-2008	Final Rejection		
01-28-2008	Information Disclosure Statement considered		
05-29-2008	Date Forwarded to Examiner		
04-23-2008	Response after Non-Final Action		
01-28-2008	Information Disclosure Statement (IDS) Filed		
01-28-2008	Information Disclosure Statement (IDS) Filed		
02-05-2008	Mail Non-Final Rejection	654	

02-04-2008	Non-Final Rejection	↑
02-22-2005	Information Disclosure Statement considered	↑
04-18-2006	Information Disclosure Statement considered	↑
10-17-2007	Withdraw Flagged for 5/25	↑
10-16-2007	Flagged for 5/25	↑
04-19-2007	Case Docketed to Examiner in GAU	↑
01-20-2007	Case Docketed to Examiner in GAU	↑
04-18-2006	Information Disclosure Statement (IDS) Filed	↑
04-18-2006	Information Disclosure Statement (IDS) Filed	↑
04-15-2006	IFW TSS Processing by Tech Center Complete	↑
10-13-2005	Corrected filing receipt	↑
02-22-2005	Information Disclosure Statement (IDS) Filed	↑
02-22-2005	Information Disclosure Statement (IDS) Filed	↑
02-22-2005	Request for Foreign Priority (Priority Papers May Be Included)	↑
02-22-2005	Reference capture on IDS	↑
09-29-2005	Cleared by OIPE CSR	↑
09-22-2005	Cleared by OIPE CSR	↑
02-22-2005	371 Completion Date	↑
09-16-2005	Application Dispatched from OIPE	
09-16-2005	Notice of DO/EO Acceptance Mailed	
09-13-2005	Correspondence Address Change	
02-22-2005	Initial Exam Team nn	

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